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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, et al.,

Petitioners,

vs.

NANCY ANNE SPANGLER, et al.,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

RESPONSE OF RESPONDENTS SPANGLER, ET AL., TO PETITIONERS' MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

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PEOPLE'S LOBBY PRESS LOS ANGELES

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Petitioners have filed a memorandum suggesting "this case may be moot." (P. 1.) For this proposition petitioners rely upon Board of School Commissioners of Indianapolis v. Jacobs (1975), 420 US 128. Aside the fact

that petitioners have overlooked the presence of the United States as a respondent here and a plaintiff (intervenor) in the trial court, a matter we will discuss more fully below, Jacobs is clearly distinguishable.

Jacobs was brought by students who had been involved in the publication and distribution of a student newspaper and they alleged that certain actions taken by the school board and its subordinates and certain of its rules and regulations interfered or threatened to interfere with the publication and distribution of the paper in violation of their First and Fourteenth Amendment rights. Presumably, violation by plaintiffs of the rules and regulations would subject *them* to discipline. The class on whose behalf plaintiffs sought to speak were "*all* high school students attending schools managed" by the school board. (Em-

phasis added.) This is quite a different situation from the case at bar where the action was brought to desegregate a public school system and where indeed all the students are affected and not just a few. For as this Court said in Brown I (Brown v. Board of Education [1954], 347 US 483, 495), "Separate educational facilities are inherently unequal."

To suggest that the case is moot because the named plaintiffs have graduated, and thus throw the rest of the students to the winds, is to disregard the teachings of twenty years of cases since Brown. Implicit and explicit in Brown II (Brown v. Board of Education [1955], 349 US 294) is that the lower courts will exercise continuing jurisdiction during the transition from segregation to desegregation, and during which time "they [the trial courts] will also consider the adequacy of any plans the defendants may

propose to meet these problems and to effectuate a transition to a racially nondiscriminatory system." 349 US at 301. This Court has consistently recognized that principle. "We agree," said this Court in Raney v. Board of Education (1968), 391 US 443, 449, "that the district courts 'should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved.'"[1] As in Gerstein v. Pugh (1975),

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[1] The trial court is following that instruction. In its initial judgment in 1970 it said:

> "The Court retains jurisdiction of this cause in order to continue to observe and evaluate the plans and the execution of the plans of the Pasadena Unified School District in regard to the hiring, promotion, and assignment of teachers and professional staff members, the construction and location of facilities, and the assignment of students." 311 F.Supp. at 505.

420 US 103, 110, n. 11: "[I]n this case the constant existence of a class of persons suffering the deprivation is certain."[2]

Accordingly, Jacobs is inapplicable here.

Moreover, this case falls well within this Court's rule that it will not allow a case to fall on account of mootness when the problem is "capable of repetition yet evading review." Moore v. Ogilvie (1969), 394 US 814, 816. Surely if the situation in Moore is not such as to persuade the Court that the cause should founder on mootness, the instant case is not one either. In Moore, the plaintiffs sought to be candi-

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[2] This is a truism applicable to the case at bar to this very moment. Even as this memorandum is being written, the trial court has been obliged to issue yet another order in response to a motion brought by the plaintiffs and present students attending Pasadena schools, and their parents, to prevent the school board from manipulating school assignments in such a way as to place greater burden on black students than on white. Opinion of District Court, dated September 30, 1975.

dates in a specific election. They complained as to the constitutionality of the signature-gathering requirements of Illinois. By the time the case arrived in this Court the election had been held, thus rendering it impossible for this Court to assist the plaintiffs as to the election. Nevertheless, this Court refused to allow mootness to stand in the way because the Illinois system "remains and controls future elections." 394 US at 816. (Note that there is nothing in the Court's statement as to the Moore plaintiffs being in or desiring to be in any future elections.) Therefore, said this Court, *ibid.*, "the need for its resolution thus reflects a continuing controversy," there, as to the "one man, one vote" problem. Similarly, the need for the effectuation of the Pasadena Plan reflects a continuing controversy, here, as to the segregated school system problem. (*See* fn. 2, *supra*.

Furthermore, even if somehow, erroneously as we say, the Jacobs rationale and not the Moore rationale is to be applied here, the defect, if it be that, is easily remedied, for new named parties seeking the same relief as the original named parties (*See* fn. 2, *supra*) can be added. Rogers v. Paul (1965), 382 U.S. 198, 199.

Finally, petitioners' suggestion that "this case may be moot" (p. 1) and that if so, "the judgments of the courts below should be vacated and the action should be dismissed" (p. 3), is for still another reason not well taken.[3] As we mentioned

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[3] Of course, if by "judgments" petitioners mean the judgments of the trial court and the court below in the instant proceeding which led to the presently pending petition for writ of certiorari, and if by "the action" petitioners mean the motion they brought on to reinstitute a free-choice plan in Pasadena and to be relieved of federal court jurisdiction, respondents do not object. We believe, however, that petitioners mean something quite different.

earlier, the United States is a party plaintiff-respondent. It was allowed to intervene under the 1964 Civil Rights Act, 42 USC 2000h-2. *See* Spangler v.[sic] United States v. Pasadena City Board of Education, 415 F.2d 1242 (CA 9 1969). It has participated, *as a party*, during the original trial, in earlier appeals (415 F.2d 1242; 427 F.2d 1352, *cert. den.*, 402 US 943), during the proceedings wherein petitioners sought to be relieved of the order to desegregate, during the appeal in the court below from the denial of that motion, in the contempt proceedings in both courts below, and, we understand, will shortly be filing its response to the petition for writ of certiorari. "In such action," under 42 USC 2000h-2, "the United States shall be entitled to the same relief as if it had instituted the action." The case, then, cannot be moot. The segregation problems

of the Pasadena school system which brought the United States into the case in the first place are very much alive.

We agree with petitioners that the petition for writ of certiorari should be denied. Their suggestion of mootness should likewise be rejected.

Respectfully submitted,

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10/2/75

CERTIFICATE OF SERVICE

I, FRED OKRAND, certify as follows:

I am an attorney at law duly admitted to practice before the Supreme Court of the United States, and am one of the attorneys for respondents Spangler, et al., herein.

On October 2, 1975, I served the within RESPONSE OF RESPONDENTS SPANGLER, ET AL., TO PETITIONERS' MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT on petitioners herein by placing three copies thereof enclosed in a sealed envelope, with first class mail postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I further certify that all parties required to be served have been served.

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